

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

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ROSY GIRON DE REYES, et al. :  
Plaintiffs :  
versus : Civil Action Number  
WAPLES MOBILE HOME PARK :  
LIMITED PARTNERSHIP, et al. : 1:16-CV-563  
Defendants.:

February 17, 2017

The above-entitled Motions Hearing was continued before the Honorable T.S. Ellis, III, United States District Judge.

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-Tonia M. Harris OCR-USDC/EDVA 703-646-1438-

EASTERN DISTRICT OF VIRGINIA

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PROCEEDINGS

THE COURT: All right. Good afternoon. You may call the next case.

THE DEPUTY CLERK: Rose Giron de Reyes, et al versus Waples Mobile Home Park Limited Partnership, et al. Civil case number 1:16-CV-563.

Counsel, please note your appearance for the record.

THE COURT: All right. For the plaintiffs who is here?

MR. RAMKUMAR: Good afternoon, Your Honor. Archith Ramkumar for the plaintiffs. And with me is Joy Odom and Simon Sandoval.

THE COURT: All right. Good afternoon. And for the defendant.

MR. DINGMAN: Good afternoon, Your Honor. Michael Dingman and Justin deBettencourt for the defendants.

THE COURT: All right. First of all, is Ms. Cuellar here? Did we advise them that we would be delayed?

(A brief interruption in the proceedings.)

THE COURT: You all may be seated.

Mr. Ramkumar, it's nice to see you again.

MR. RAMKUMAR: Nice to see you too, Your Honor.

THE COURT: Now, are all of these people here from your law firm?

1 MR. RAMKUMAR: A substantial portion of them, yes,  
2 Your Honor.

3 THE COURT: Now, you understand that I'm all in  
4 favor of having people observe things, but they're not billed  
5 to this case and I would not expect them to be.

6 MR. RAMKUMAR: Understood, Your Honor.

7 THE COURT: Do you understand that?

8 MR. RAMKUMAR: I understand, Your Honor.

9 THE COURT: And what your firm claims in terms of  
10 pro bono time is up to your firm. But in my view, their  
11 appearance here is for their personal edification and does not  
12 contribute to the world of pro bono work.

13 Secondly, Mr. Ramkumar was a clerk of mine a couple  
14 of years ago, but I do not recuse myself in cases involving  
15 former clerks. If I only had one or two of them, I think that  
16 would be appropriate. I've now had 60-some. So I can no  
17 longer do it. 65 or more.

18 You may be seated for a moment.

19 I'm familiar with the facts of this case, having  
20 addressed them previously. And of course, I know we're here  
21 today on cross motions for summary judgment. One issue I want  
22 to mention at the outset so that I can dispose of it and it  
23 won't take our time for oral argument because I have another  
24 matter. As Mr. Ramkumar will be familiar with and be able to  
25 tell you all, I sometimes schedule more in a day than I can

1 possibly do. And putting this matter at 11:00 was a fit of  
2 unwarranted optimism and I apologize to all of you for the  
3 delay, but that's what it is.

4 Now, the first issue I want to address is the  
5 defendant's motion for summary judgment on the issue of  
6 disparate impact. As you all know, I disposed of disparate  
7 impact at the motion to dismiss stage. Wrote an opinion and  
8 made clear beyond dispute that my ruling was that disparate  
9 impact could not be used to prove the -- or to satisfy the  
10 causation requirement. Disparate impact is a judicially  
11 created rule to operate in the case of statutes where  
12 causation is required. And I held explicitly that disparate  
13 impact could not be used to satisfy the causation requirement  
14 here, because to do so, given the unique circumstances;  
15 namely, that virtually all illegal or undocumented aliens are  
16 Latino or Hispanic. And, therefore, to use disparate impact  
17 to satisfy the causation requirement would effectively erase  
18 the causation requirement.

19 But I went on to say that disparate impact could be  
20 used -- could be used to help show disparate treatment in  
21 addition to other proof to meet the plaintiff's burden of  
22 demonstrating causation. I don't know why that wasn't  
23 recognized, and I'm not going to take any time for that  
24 argument today. I ruled that. I wrote an opinion on it. It  
25 is law of the case, and nothing has been called to my

1 attention that would cause me under well-established doctrine  
2 to change the rule of the -- of the law of the case in that  
3 regard.

4 So I would think that the motion for summary  
5 judgment on that ground should be denied as moot. Already  
6 ruled on by the Court. And we will turn then to the other  
7 aspects of this case and to hear summary judgment on those.

8 Now, I'm familiar with your briefs, and I have read  
9 them. It seems to me that although the case is not without  
10 its complexities or subtleties, it is in the end fairly  
11 straightforward. As I see it, the jury will be asked, if this  
12 case goes to a jury, to decide whether the plaintiff has shown  
13 by a preponderance of the evidence that the policy that is in  
14 issue here, or versions of it, in issue here, whether in  
15 implementing that policy the defendant or defendants did so  
16 because of the Latino or Hispanic origin of these plaintiffs.  
17 That's what the statute says. It says "because of." And  
18 that's what the jury will decide.

19 So let me hear argument now focused on the disparate  
20 treatment claim and the 1981 claim and -- let's take them one  
21 at a time. The 1981 claim and then there's a Randall Act  
22 claim, a Virginia code claim, and a breach of contract claim.  
23 Let's take the disparate treatment claim first, and let me  
24 hear from -- let me hear from the plaintiff first.

25 On the disparate treatment claim, is it the

1 plaintiff's position that the plaintiff is entitled to summary  
2 judgment on disparate treatment or that the defendant is not  
3 entitled? Which is it?

4 MR. RAMKUMAR: It is the plaintiff's position, Your  
5 Honor, that defendant is not entitled to summary judgment on  
6 the disparate treatment claim.

7 THE COURT: All right. Let me point out to those of  
8 you watching, I want to commend Mr. Ramkumar because he did  
9 what no one else this morning has done. He answered my  
10 question. And he knows that I'm rabid about that. And that's  
11 right. He's here to tell me why the defendant is not entitled  
12 to summary judgment on disparate treatment.

13 Now, with that out of the way, you may be seated.  
14 And I'll ask you to tell me, since it's your burden Mr.  
15 Dingman, it's your burden to persuade me that this record  
16 warrants summary judgment on behalf of the defendants on the  
17 disparate treatment claim.

18 MR. DINGMAN: Yes, sir. As the Court is aware, the  
19 plaintiffs have no direct evidence of discrimination so they  
20 are proceeding under the *McDonnell Douglas* rubric. And that  
21 has three aspects to it where burden may shift back and forth.  
22 But as the Supreme Court held in *Hicks*, it is --

23 THE COURT: I'm familiar with all of that.

24 MR. DINGMAN: Yes, sir.

25 THE COURT: They have to show that the plaintiffs

1 are members of a protected class. They are, aren't they?

2 MR. DINGMAN: Well, our position remains, Your  
3 Honor, the female plaintiffs as illegal aliens are not a  
4 protected class under the Fair Housing Act.

5 THE COURT: Well, they may not be a protected class  
6 in any statute, but as -- as people of Hispanic origin,  
7 they're protected, aren't they? The fact that they're illegal  
8 is what's at the heart of the case.

9 MR. DINGMAN: Well, the issue, Your Honor, is  
10 whether, as the Court discussed in its motion to dismiss  
11 opinion, regarding the *Keller* case.

12 THE COURT: As the Court discussed in what?

13 MR. DINGMAN: In your motion to dismiss opinion.

14 THE COURT: I didn't say they weren't protected.

15 MR. DINGMAN: No, sir. But you referred to the  
16 *Keller* case from the Eighth Circuit where that Court held that  
17 there's no historic ties between the enactment of the Fair  
18 Housing Act and illegal aliens. And for that reason, we  
19 believe that they are not proper plaintiffs under Fair Housing  
20 Act, because the Act was never intended to apply to that.

21 We do agree that the male plaintiffs who are in this  
22 country legally are in a protected class.

23 THE COURT: All right. What else do you argue under  
24 the *McDonnell Douglas* framework? First you say that the  
25 females, as they're illegal or undocumented, they're not

1 protected. The next thing that they would have to show is  
2 that they sought to enter a lease for the park. No question  
3 about that, is there?

4 MR. DINGMAN: They attempted to enter into a lease  
5 for the park, but they do not have a *prima facie* case. And  
6 the reason for that, Your Honor, is they have to demonstrate,  
7 and they alleged in their complaint in Paragraph 114 that  
8 they're treated differently from similarly situated  
9 non-Latinos, meaning non-Latinos who are also illegal aliens.

10 They have presented this Court with no evidence that  
11 non-Latino illegal aliens are allowed to circumvent the policy  
12 and design leases. In fact, we've provided to the Court  
13 letters sent by the defendants to non-Latino residents  
14 requiring that they provide proof of legal residency.

15 So they cannot establish a *prima facie* case. They  
16 have not been denied housing in favor of someone else. They  
17 cannot comply with the policy. And the reason they cannot  
18 comply with the policy is not because they're Latino, it's  
19 because the female plaintiffs are in this country illegally.  
20 And the uncontested facts, Your Honor, demonstrate that. The  
21 plaintiffs have admitted that Latinos routinely sign leases at  
22 the park. Their expert claims that 60 percent of the  
23 residents in fact are Latino. That would be 90 of the 150  
24 lots.

25 They also testified at their depositions, the

1 plaintiffs themselves, that they do not believe that they were  
2 treated differently because they're Latino. They recognize  
3 that the issue was the fact that the female plaintiffs are  
4 illegal aliens. All of that is conceded. So they do not have  
5 a *prima facie* case of discrimination. They cannot comply with  
6 the policy because of the fact that the female plaintiffs are  
7 here illegally. And that's been true since the inception of  
8 the case, Your Honor.

9                   The four male plaintiffs have not only signed  
10 leases, they've re-upped their leases year after year after  
11 year. The plaintiffs have not presented to this Court any  
12 evidence that non-Latinos are treated any differently with  
13 respect to this policy, which everyone concedes is neutral on  
14 its face. So they have no evidence to establish a *prima facie*  
15 case of discrimination.

16                   If they were able to establish that burden, Your  
17 Honor -- and I would again point to the Court that there's no  
18 evidence of that. The plaintiffs haven't even attempted to  
19 point the Court to any example where a non-Latino illegal  
20 alien was treated differently. In other words, was allowed to  
21 sign a lease without complying with the policy. There is no  
22 evidence of that. Without that evidence, they cannot make out  
23 their *prima facie*. If they could, as the Court is aware,  
24 under the *McDonnell Douglas* rubric, the defendants can then  
25 set forth what are the policy reasons. And as the Court in

1       Hicks held, this isn't a determination of whether those  
2 policies are correct or not. It would shift the burden back  
3 to the plaintiffs to demonstrate that the policy reasons are  
4 false and that the actual purpose for the policy is  
5 intentional discrimination.

6               The policies are not only not false, Your Honor,  
7 they're well grounded. The first one is based upon the  
8 anti-harboring statute found at AUSC 1324.

9               There was a case, and we talked about this case  
10 quite a bit at the motion to dismiss stage, *United States v.*  
11 *Aguilar*, where Ms. Aguilar was convicted of 13 counts under  
12 the anti-harboring statute.

13               The issue in that case, Your Honor, is whether there  
14 had to be proof of substantial facilitation. Judge Trenga  
15 found that that was not required. The Fourth Circuit found  
16 that there's a split, and because of that found there was no  
17 plain error and affirmed the conviction of Ms. Aguilar. In  
18 doing so, I want to point the Court to two statements that the  
19 Fourth Circuit made with respect to the evidence it relied on  
20 in affirming the conviction.

21               The Court first said when immigration "showed up,"  
22 that was enough to give knowledge to Ms. Aguilar. We in fact  
23 have actual knowledge that the female plaintiffs are in this  
24 country illegally.

25               The Court went on to say this: "But she also

1 admitted that it was" --

2 THE COURT: That's the prosecution under the  
3 statute, isn't it?

4 MR. DINGMAN: Yes, sir.

5 THE COURT: It's not a Fair Housing Act case?

6 MR. DINGMAN: No.

7 THE COURT: So you cite it for what purpose?

8 MR. DINGMAN: I cite it, Your Honor, that one reason  
9 for this policy is to avoid a potential criminal prosecution  
10 under the anti-harboring statute.

11 THE COURT: All right. Next. Go on.

12 MR. DINGMAN: So here is what the Court said --

13 THE COURT: Why do I need to know what the Court  
14 said?

15 MR. DINGMAN: Because it relates, Your Honor,  
16 respectfully, to the policy here.

17 THE COURT: Go on.

18 MR. DINGMAN: Here is what the Court said --

19 THE COURT: Well, you've told me already that the  
20 merits of the policy are not at issue. All it has to be is a  
21 legitimate nondiscriminatory reason that isn't pretextual. Is  
22 that right?

23 MR. DINGMAN: That's right. And I also want to  
24 argue as to why it's clearly not false.

25 So here is what the Court said, which relates

1 specifically to the purpose of this policy, at least one of  
2 them.

3 So she also admitted that, "It was the same to her  
4 whether her tenants possessed proper documentation or did  
5 not."

6 The Court went on to say the following:

7 "Particularly, inasmuch as she took no steps to ascertain the  
8 status of her tenants, even after being repeatedly warned by  
9 officials that numerous of her tenants were not properly  
10 documented, we concluded the evidence induced at trial  
11 supported a finding that she acted in reckless disregard that  
12 her tenants were undocumented."

13 So under the facts of that case, if you have  
14 knowledge that your tenants might be undocumented, that's  
15 enough for a conviction. So one of the reasons for this  
16 policy, Your Honor, is to ask for evidence of legal presence  
17 so that we avoid that. The plaintiffs argue, well, there's a  
18 split in the circuits, it's unclear whether there would  
19 actually be a prosecution. But a business isn't required to  
20 walk up to the line of a criminal act. It is certainly within  
21 the reasonable operation of a company to avoid even the  
22 possibility of that kind of prosecution.

23 The second reason for the policy, Your Honor, which  
24 was talked about by Mr. Jones, a 30(b)(6) representative of  
25 the defendants. It's also to show the objective of Mr.

1 Caruso's expert testimony, which is not contradicted in this  
2 case, is that requiring proof of legal residence is key to the  
3 underwriting of a lease for a very straightforward reason. As  
4 the Court is aware, it's illegal to hire somebody who's in  
5 this country illegally. As Mr. Caruso stated in his opinion  
6 in his deposition, Your Honor, making sure that an applicant  
7 has viable employment and can actually pay the rent for the  
8 extended period of the lease, is a very straightforward and  
9 key issue in underwriting. So that's another reason it's  
10 requested.

11                   The third reason is with respect to criminal  
12 background checks. And the plaintiffs in this case have  
13 missed this point from the beginning. We're not talking about  
14 what you already -- what the entity who's performing the  
15 background check does. They take a name from the defendants.  
16 If that name is not accurate with respect to the applicant,  
17 then whatever he already does is meaningless.

18                   So one of the other purposes to make sure that we  
19 can verify identity. And in the briefs we documented the  
20 difference between what the male plaintiffs had to do to  
21 obtain their social security numbers, being fingerprinted,  
22 becoming legal, having legal status in this country, answering  
23 questions, being fingerprinted on an annual basis. That's how  
24 they were able to get their social security. The ITIN process  
25 has none of that. And in fact, the ITIN process doesn't even

1 concern itself with legal status. The proof in this case is  
2 that the four female plaintiffs all have ITINs, not one of  
3 them are in this country legally.

4 THE COURT: All had what? I'm sorry.

5 MR. DINGMAN: I'm sorry?

6 THE COURT: You said they all had what?

7 MR. DINGMAN: They all have ITINs, Individual Tax  
8 Identification Numbers. But --

9 THE COURT: From what? From whom?

10 MR. DINGMAN: From the IRS.

11 THE COURT: Oh, I see what you mean. They had ID  
12 numbers from paying taxes.

13 MR. DINGMAN: Yes, sir.

14 THE COURT: All right. Go on.

15 MR. DINGMAN: So those policy reasons are not --  
16 they're not just not false, they're unsalable. They're  
17 business reasons, they're legitimate reasons. So now under --

18 THE COURT: But isn't it open -- whether they're  
19 legitimate or not doesn't end the inquiry. The inquiry is  
20 whether they were pretextual for discriminatory purpose. So  
21 in other words, if the real reason for the -- for the policy  
22 was to keep Latinos out, that would violate the FHA, wouldn't  
23 it? And the Virginia Fair Housing Act, wouldn't it?

24 MR. DINGMAN: This is what the *Hicks* --

25 THE COURT: I'm sorry. I asked a question.

1 MR. DINGMAN: No, sir. They have to show that the  
2 policy reasons are false.

3 THE COURT: No. The hypothetical I gave you was  
4 clear. Even if the policy reasons you give have some merit,  
5 if the true reason for the policy was to keep Latinos out,  
6 that would violate the FHA; yes or no?

7 MR. DINGMAN: If it's proven that it's false and  
8 intentional, yes.

9 THE COURT: All right. Go on.

10 MR. DINGMAN: And that's what the Supreme Court held  
11 in *Hicks*. It said, "A reason cannot be proved to be 'a  
12 pretext for discrimination unless it has shown both that the  
13 reason was false and that the discrimination was the real  
14 reason.' "

15 So they have not -- the plaintiffs have not  
16 proffered --

17 THE COURT: Remind me of the date of *Hicks*.

18 MR. DINGMAN: *Hicks* was decided in 1993, Your Honor.

19 THE COURT: That's Fourth Circuit?

20 MR. DINGMAN: *Hicks* is -- this is a U.S. Supreme  
21 Court.

22 THE COURT: Oh, the Supreme Court.

23 MR. DINGMAN: Yes, sir. *St. Mary's Honor Center v.*  
24 *Hicks*.

25 THE COURT: All right. Go on.

1                   MR. DINGMAN: So in that case, the Court made it  
2 very clear that when you're at this stage of the *McDonnell*  
3 *Douglas* rubric, so to speak, the plaintiffs now have to prove  
4 that these policy reasons not just aren't debatable, they have  
5 to prove that they're false, that they're made up.

6                   THE COURT: Well, they have to prove that there's  
7 evidence of pretext. I don't determine at this stage -- if  
8 there's evidence of pretext, it goes to trial.

9                   MR. DINGMAN: The evidence though, Your Honor, has  
10 to be that these --

11                  THE COURT: That's right. It has to be admissible  
12 evidence of pretext. Now, do you know what they're contending  
13 is pretextual or why?

14                  MR. DINGMAN: No, they have not.

15                  THE COURT: All right. Let's learn.

16                  Mr. Ramkumar, let's hear from you on this. I take  
17 it you don't quibble with his argument that the policy  
18 reasons, asserted by the defendant, are on the face of it  
19 legitimate non-discriminatory reasons. Whether they're a good  
20 idea or a bad idea doesn't matter, but they're legitimate  
21 non-discriminatory reasons. Aren't they?

22                  MR. RAMKUMAR: Correct, Your Honor. Plaintiff's  
23 position would be that those reasons are pretextual.

24                  THE COURT: Yes. Now, why? On what admissible  
25 evidence is that claim made or based?

1 MR. RAMKUMAR: So Your Honor, I'm going to address  
2 the reasons given one at a time in the order they were  
3 presented.

4 THE COURT: I'm sorry, sir. My ears, as you may  
5 recall, they plug up occasionally, and they are fully plugged  
6 today.

7 MR. RAMKUMAR: I'm going to address the reasons  
8 given by opposing counsel in the order that he presented them.

9 THE COURT: All right. Sir.

10 MR. RAMKUMAR: And I'm going to begin with the  
11 anti-harboring statute, 8 U.S.C. 1324.

12 So plaintiffs covered this in their briefing, but  
13 there are two principal reasons why there are sufficient  
14 evidence that that reason is pretextual.

15 First, the statutory language would not impose  
16 liability merely for renting to illegal or undocumented  
17 immigrants. Indeed *Aguilar*, the case cited by opposing  
18 counsel, involved a situation where a landlord was repeatedly  
19 warned by immigration officials before the criminal conviction  
20 was upheld. So in that situation, the mens rea requirement  
21 was met.

22 By contrast, there's no suggestion anywhere in these  
23 facts that any such warnings were made and that the mens rea  
24 requirement would be met.

25 Secondly, Your Honor, as plaintiffs pointed out,

1 defendants did not behave like landlords who believed that  
2 they would be exposed to criminal liability. When they  
3 learned or when they conducted the recertification process,  
4 they did not take prompt steps to evict the plaintiffs. They  
5 had since switched all of the plaintiffs, including the male  
6 plaintiffs, who were legally present on the month-to-month  
7 leases with increased rent. And as plaintiffs pointed out in  
8 the reply brief, if defendants actually were worried about  
9 facing criminal liability, they would have promptly taken  
10 steps to evict the female plaintiffs, yet they did not do so.

11                   For these reasons --

12                   THE COURT: Well, for being good-hearted they get  
13 docked.

14                   MR. RAMKUMAR: Well, Your Honor, plaintiffs would  
15 dispute the fact that they were good-hearted insofar as the  
16 increased rent operated to functionally evict all of the  
17 plaintiffs, both the male and the female plaintiffs.

18                   Now, with respect to the next justification, which  
19 was lease underwriting concerns. Once again, plaintiffs have  
20 presented sufficient evidence that this rational is  
21 pretextual. As a threshold matter, the lease underwriting  
22 justification depends on the fact that defendants contend that  
23 because one of the individuals in the household has no earning  
24 potential, they present a risk to the lease. But this would  
25 be true of any household where one of the parents stayed at

1 home. Yet, there's no indication anywhere in the policy that  
2 applies with equal force to those households.

3 Moreover, there is no record of evidence that the  
4 plaintiffs have been anything but model tenants. They have  
5 all paid their rent on time and there have been no risk to the  
6 lease presented as they lived on the lots when the policy was  
7 suddenly and abruptly applied to them.

8 Moreover, the fact of the matter is there's simply  
9 no record of evidence as to why undocumented immigrants  
10 suddenly pose an unacceptable lease underwriting risk. And in  
11 connection with this --

12 THE COURT: Under what?

13 MR. RAMKUMAR: There is no record evidence, Your  
14 Honor, that undocumented immigrants pose an unacceptable lease  
15 underwriting risk in connection with any other groups, such as  
16 the stay-at-home parents I just mentioned.

17 In connection with this, plaintiffs want to  
18 emphasize the retroactive nature of how the policy was applied  
19 in this case. Once again, the plaintiffs lived on the lots  
20 four years. They paid their rent on time and there was no  
21 suggestion that they made any sort of -- or posed any sort of  
22 unacceptable risk.

23 Finally, there are other ways if defendants were  
24 truly interested in ensuring that lease underwriting was  
25 properly supported for them to achieve that goal. For

1 example, they could have asked for a guarantor. They could  
2 have asked for an additional security deposit. These would  
3 have been additional ways or reasons for them to mitigate  
4 their risk, yet they chose to ignore those alternatives.

5 Third, opposing counsel mentioned criminal  
6 background checks. This has been the primary issue that  
7 defendants have asserted throughout this litigation. And  
8 plaintiffs have thoroughly responded and demonstrated why this  
9 rational is pretextual in their briefing.

10 The company that defendants retain to carry out the  
11 criminal screening and criminal background checks did not  
12 require a social security number. And more importantly,  
13 defendants themselves did not require a social security number  
14 as recently as 2013. Their 30(b)(6) representative conceded  
15 that they accepted individual taxpayer identification numbers  
16 from individuals as proof of identity and that social security  
17 numbers were not required.

18 Moreover --

19 THE COURT: Of course, you can buy those on the  
20 streets of D.C.

21 MR. RAMKUMAR: I'm sorry, Your Honor?

22 THE COURT: You can buy those on the streets of  
23 D.C., social security numbers.

24 MR. RAMKUMAR: Yes, Your Honor.

25 THE COURT: As you know from sitting in this

1 courtroom for a year.

2 MR. RAMKUMAR: Yes, Your Honor.

3 THE COURT: All right. So -- but I find it hard to  
4 believe that doing a background check wouldn't be facilitated  
5 by having some of this information to identify. One of the  
6 problems with undocumented or illegal aliens is that they  
7 frequently use a lot of different names. It makes it very  
8 hard to check backgrounds. But wouldn't you -- wouldn't it be  
9 reasonable to check backgrounds of people who wanted to rent  
10 in your facility?

11 MR. RAMKUMAR: So, Your Honor, plaintiffs on this  
12 point would point to defendants own --

13 THE COURT: I'm sorry. Did I ask a question?

14 MR. RAMKUMAR: Yes, yes, Your Honor. And the answer  
15 is in a vacuum it would be reasonable, but on the facts of  
16 this case the way the background check methodology has been  
17 applied it is pretextual.

18 THE COURT: All right. Tell me why.

19 MR. RAMKUMAR: The reason for that, Your Honor, is  
20 defendant's own behavior. As noted, they accepted individual  
21 taxpayer identification numbers as proof of identity for a  
22 number of years and abruptly stopped doing so. So this Court  
23 need not evaluate the relative efficacy of individual taxpayer  
24 --

25 THE COURT: And did they explain why they quit doing

1 it, such as it didn't work well, they didn't get accurate  
2 results?

3 MR. RAMKUMAR: There's no such record explanation,  
4 Your Honor, as to why the switch was made.

5 THE COURT: All right. Go ahead.

6 MR. RAMKUMAR: Moreover, on the criminal background  
7 checks point, Your Honor, it is undisputed that half of the  
8 plaintiffs in this lawsuit, the male plaintiffs, all pass  
9 criminal background checks as they are legally present in this  
10 country. And there is not a coherent record justification for  
11 why they were forced to pay increased rent and why they were  
12 also functionally evicted. For these reasons, the plaintiffs  
13 contend that the criminal background checks justification is  
14 also pretextual.

15 THE COURT: All right. Go back now to the  
16 beginning. Mr. Dingman argued that they're not a protected  
17 class because they're illegal aliens. Illegal aliens are not  
18 a protected class. And I suggested to him that that's not a  
19 class under the FHA that's protected, what's protected is  
20 Latinos. What's your answer to his argument?

21 MR. RAMKUMAR: The plaintiff's answer, Your Honor,  
22 is simply what you just stated, which is the protected class  
23 is race or national origin. And Your Honor addressed this  
24 issue in adjudicating defendant's motion to dismiss and  
25 rejected this particular argument at that point in time. The

1 female plaintiffs are suing as members of a protected class in  
2 that -- in their race or national origin.

3 THE COURT: All right. Let me go back now to Mr.  
4 Dingman.

5 Anything else you want to argue on your motion for  
6 summary judgment on the disparate treatment under the FHA?

7 MR. DINGMAN: Yes, sir. I would like to address  
8 some of the points that counsel for plaintiff made. And I  
9 want the Court aware --

10 THE COURT: Speak up, please.

11 MR. DINGMAN: I would like to address some of the  
12 points that were made with respect to the policy issues, and  
13 also to point the Court to undisputed facts that show, because  
14 it's a two-step process. They have the burden of proving that  
15 the policy reasons are not only false. That's step one. Step  
16 two is they have to have evidence to show that the real reason  
17 is for discrimination.

18 So what are the undisputed facts in this case?  
19 Sixty percent of the residents are Latino. There is no  
20 evidence that there's been a decline in the number of Latino  
21 residents at this park. There has been no evidence that a  
22 Latino who is in this country legally has ever been denied the  
23 right to lease.

24 We've provided the Court with documents showing that  
25 the defendants advertise in Latino newspapers. There's

1 testimony from the plaintiffs themselves that we have Hispanic  
2 Spanish speakers in our office to help them read their leases.

3 There is no evidence of an intent to discriminate  
4 against Latinos. In fact, the evidence is overwhelmingly  
5 clear that that has never been the case. And this is an  
6 important point, Your Honor, because what often gets  
7 overlooked here is it's not the defendant companies. There's  
8 a couple of women: Josephine Giambanco, who herself is an  
9 immigrant; Carolyn Easton, who's a Latino immigrant from Peru,  
10 they are the ones that the plaintiffs are saying, "You're  
11 racist. You implement a discriminatory policy and you do it  
12 on purpose." And they have presented no evidence of that,  
13 Your Honor. None.

14 Even the plaintiffs themselves when they were asked  
15 point-blank at their depositions: "Do you think you were  
16 treated differently because you're Latino?" They either said,  
17 "no" or "I don't know." So there is no proof that creates a  
18 tribal issue that the real purpose was to discriminate. It's  
19 exactly the opposite.

20 The majority of the people at that this park are  
21 Latino. None of the other Latino families have issues. These  
22 folks have issues because of the illegal status of the female  
23 plaintiffs. And that's really what they've alleged from the  
24 beginning of this case.

25 So let me go back --

1                   THE COURT: It has always been a puzzle to me why  
2 the parties did not work this out. The reason that it's been  
3 a puzzle to me is that the defendants have always claimed, as  
4 you have just articulated, that they don't discriminate.  
5 Indeed, the facts show that they have many Latinos and that  
6 their employees are Latinos, or one of them anyway. Am I  
7 correct?

8                   MR. DINGMAN: Yes, sir.

9                   THE COURT: All right. Now, if what you really want  
10 to do is to have enough information so that you could ensure  
11 that somebody is staying with you is not a threat criminally  
12 to other people, and if what you really want to do is to have  
13 enough information so that you can assure that the lessee  
14 does not -- is not going to skip and not pay the rent, that is  
15 able to pay the rent, I've never understood why you couldn't  
16 go to these people, rather than instituting a policy that  
17 may -- may lead to disputes whether you win or lose you still  
18 have to litigate, and get the information you need in order to  
19 satisfy yourself that these four women are not ex-murderers or  
20 some other kinds of threatening people, and that they or their  
21 husbands are going to pay the rent. I don't understand why  
22 that wouldn't have been the sensible way to resolve this  
23 matter. Rather than, you can have a policy but in  
24 implementing the policy you've got to use common sense.

25                   Now, you may take the view that you don't want

1 illegal aliens in the park. Period. That's -- that's another  
2 almost separate issue. Undocumented. I use the word  
3 "illegal." It's the same thing. If they don't have  
4 documents, they're not here legally. But if that's your  
5 position, you don't want illegal aliens in the park, then all  
6 these justifications really don't matter. You just don't want  
7 illegal aliens in the park. Is that it?

8 MR. DINGMAN: No, sir. The reason why we --

9 THE COURT: You have other illegal aliens in the  
10 park?

11 MR. DINGMAN: Well, if we find that people don't  
12 have the proper documentation, as we've provided to the Court,  
13 they are sent letters to prove their legal residence in the  
14 United States.

15 THE COURT: And suppose they don't prove their legal  
16 residence?

17 MR. DINGMAN: Well, then we have to do something.

18 THE COURT: What do you do?

19 MR. DINGMAN: Well, Your Honor is talking about the  
20 four female plaintiffs in this case.

21 THE COURT: I beg your pardon?

22 MR. DINGMAN: Your Honor referred to the four female  
23 plaintiffs in this case.

24 THE COURT: Yes. They're gone. They've moved out.

25 MR. DINGMAN: One couple is still there.

1 THE COURT: All right.

2 MR. DINGMAN: But under Your Honor's "why couldn't  
3 we do something different for them?" Well, under *Aguilar*, we  
4 now know that we have illegal aliens --

5 THE COURT: I see. So you're still concerned about  
6 that.

7 Now, Mr. Ramkumar has distinguished this case  
8 because he says there was notice and everything else. And  
9 your answer to that, as you've said, you're not required to  
10 take the risk that --

11 MR. DINGMAN: Our facts are worse.

12 THE COURT: I beg your pardon?

13 MR. DINGMAN: Our facts are worse, Judge. We don't  
14 have somebody saying I've -- we think you have illegal -- we  
15 know. We have actual knowledge. We don't even -- the statute  
16 has two parts: Knowledge and reckless disregard. We don't  
17 even get to reckless disregard, because we have actual  
18 knowledge that we have illegal aliens.

19 So under Judge Trenga's ruling, if you're not  
20 required --

21 THE COURT: Under whose ruling?

22 MR. DINGMAN: Judge Trenga, who was the trial judge  
23 for *Aguilar*.

24 THE COURT: Oh, all right.

25 MR. DINGMAN: He ruled that substantive

1 facilitation, meaning you are actually engaging in trying to  
2 harbor, is not required for a conviction. And the Fourth  
3 Circuit affirmed that.

4 So to your point, once we know that we have somebody  
5 who is there illegally, we are exposed under the  
6 anti-harboring statute because we now have knowledge.

7 THE COURT: Let me hear from Mr. Ramkumar's answer  
8 to that argument.

9 You distinguished *Aguilar*, but not yet quite  
10 adequately given what Mr. Dingman says.

11 MR. RAMKUMAR: So, Your Honor, plaintiffs also  
12 presented a factual issue as to why the anti-harboring  
13 justification is pretextual, and this is because defendants  
14 did not behave like landlords who believed that they actually  
15 would face criminal liability.

16 THE COURT: Why not?

17 MR. RAMKUMAR: And this goes back to the fact, Your  
18 Honor, that they switched the plaintiffs, all of them,  
19 including the male plaintiffs, onto month-to-month leases at  
20 the point where they became aware of the female plaintiffs,  
21 sir.

22 THE COURT: Well, don't the female plaintiffs and  
23 the male plaintiffs go together, they're couples? So if  
24 you -- how can you switch -- and in fact, the male was really  
25 the signature, the lessor -- lessee, rather; isn't that right?

1 MR. RAMKUMAR: That's correct, Your Honor.

2 THE COURT: So they say, we don't want illegal  
3 aliens in the park because of the statute, we risk criminal  
4 liability. And you say that's pretextual, why?

5 MR. RAMKUMAR: Because, Your Honor, at the point  
6 where they acquire that knowledge of the female plaintiff  
7 status, they did not take prompt steps to evict the female  
8 plaintiffs.

9 THE COURT: Well, doesn't that make them decent  
10 people rather than bad people? I mean, to throw them out on  
11 the street -- the fact that they didn't throw them out on the  
12 street doesn't seem to me to point to the fact that they are  
13 discriminating against Latinos.

14 MR. RAMKUMAR: That point, Your Honor, goes  
15 specifically to whether defendants actually believed that they  
16 would face criminal liability under the statute or whether  
17 they face a substantial risk of jail time and criminal  
18 liability, as opposing counsel has represented. Plaintiff's  
19 position is that --

20 THE COURT: So your point is simply that they really  
21 believed they faced -- they faced criminal liability then they  
22 would do nothing short of evicting them. The fact that they  
23 didn't do it, you're saying shows that they didn't really  
24 believe they were at risk for criminal prosecution.

25 MR. RAMKUMAR: That's correct, Your Honor. And in

1 fact, defendant's own 30(b)(6) representative was unable to  
2 name whether or not defendants faced liability under the  
3 statute.

4 THE COURT: Well, that doesn't matter. It's a legal  
5 question. It's not something a witness is going to answer.  
6 The 30(b)(6) isn't going to change that. Are you saying that  
7 the 30(b)(6) said they weren't concerned about it?

8 MR. RAMKUMAR: No, Your Honor. This simply goes  
9 back to the point of what defendants actually believed at the  
10 time of the recertification.

11 THE COURT: Well, did he say at the time of the  
12 implementation that they didn't believe that that was a risk?

13 MR. RAMKUMAR: Your Honor, he simply said they did  
14 not believe that they faced liability under any particular  
15 immigration statute.

16 THE COURT: Really? I don't recall that being the  
17 testimony.

18 Mr. Dingman, what was the testimony?

19 MR. DINGMAN: Mr. Jones testified that concern over  
20 the anti-harboring statute was one of the reasons --

21 THE COURT: Was he the 30(b)(6) witness?

22 MR. DINGMAN: Yes, sir.

23 THE COURT: Well, maybe Mr. Ramkumar is referring to  
24 something different. But if that's a 30(b)(6) witness, I  
25 don't think it can be said that he testified they weren't

1 worried about criminal liability.

2 MR. RAMKUMAR: Your Honor, plaintiff's position  
3 would be that the 30(b)(6) representative was unsure about  
4 whether or not the landlord ultimately faced liability.

5 THE COURT: Well, he can be unsure as to whether he  
6 would actually be prosecuted, but that doesn't mean that it  
7 isn't sensible to take precautionary steps to ensure that  
8 you're not prosecuted. I'm sure when you've gone through a  
9 red light you hope that you wouldn't be prosecuted, but you  
10 were careful the next time to not to go through it.

11 (A brief interruption in the proceedings.)

12 THE COURT: All right. Go ahead, Mr. Ramkumar.

13 MR. RAMKUMAR: Going back to the precautionary  
14 measures point you just made, Your Honor. Once again,  
15 plaintiffs would stand behind the factual dispute they have  
16 raised that the defendants did not behave like landlords who  
17 actually believed they faced anti-harboring liability.

18 THE COURT: I see. I understand that argument. I  
19 think we have exhausted the principal arguments on the two  
20 Housing Act claims.

21 Is there anything else I should know about either  
22 the Virginia or FHA claims?

23 MR. DINGMAN: Your Honor, I just want to respond --

24 THE COURT: Louder, please.

25 MR. DINGMAN: I would like to respond to the

1 argument that was just made. The facts in this case -- and  
2 this is the plaintiffs wanting to have their cake and eat it  
3 too -- when we get to the Mobile Home Lot Rental Act claim,  
4 they say, we attempted to evict these plaintiffs and the  
5 evidence is clear we demanded that they provide proof of their  
6 legal residence. When they could not do that, we threatened  
7 eviction.

8 This lawsuit was then filed, and the plaintiffs  
9 claim that under the Mobile Home Lot Rental Act we couldn't  
10 evict them anyway, that we had to at least give them 60 days  
11 notice.

12 THE COURT: Well, that's true. Isn't it 60 days  
13 notice?

14 MR. DINGMAN: That's what the Act says.

15 So this argument that --

16 THE COURT: It makes it true.

17 MR. DINGMAN: -- that actual discrimination is shown  
18 because we didn't evict immediately.

19 THE COURT: That's what he's saying. His argument  
20 is --

21 MR. DINGMAN: And the plaintiffs are saying --

22 THE COURT: Just a moment. One of us at a time.  
23 He's saying that the fact that you didn't evict them  
24 undermines your claim that you were really worried about  
25 criminal prosecution, whether that's plausible or not is

1 another matter. Go ahead.

2 MR. DINGMAN: Well, how can the plaintiffs take that  
3 position and at the same time say that if we had gone forward  
4 with those evictions we would have violated the Mobile Home  
5 Lot Rental Act?

6 THE COURT: Now, have you and Mr. Ramkumar pretty  
7 much exhausted the principal points of the FHA and the  
8 Virginia Housing Act claims?

9 MR. DINGMAN: I would just close with this, Your  
10 Honor. The plaintiffs have not pointed this Court to any  
11 evidence showing intentional discrimination against Latinos.

12 THE COURT: How about the 1981 claim? Is that any  
13 different in analysis?

14 MR. DINGMAN: It's not any different, Your Honor.  
15 Obviously, you have to show intentional discrimination under  
16 1981. With respect to the citizenship claims, we have all the  
17 same admissions from the plaintiffs that non-U.S. citizens  
18 routinely sign leases, they're not prohibited from signing  
19 leases.

20 And when we were here on a motion to dismiss, the  
21 plaintiffs told the Court the burden that they faced were  
22 obtaining I-94's. Well, that's not true. The female  
23 plaintiffs have no documents showing their legal presence in  
24 the United States, let alone an I-94.

25 So the burden that was proffered was not true. So

1 there is no basis for a 1981 claim, and it should be  
2 dismissed.

3 THE COURT: What do you say to the arguments under  
4 both the Housing Act and the '81 claim that until April of  
5 2016 the policy required documents that weren't particularly  
6 probative of identity or legal status in the United States,  
7 and that the criminal and credit background checks can be run  
8 and indeed were run on some of the plaintiffs without the  
9 forms that the policy requires, and that numerous legal  
10 immigrants lack the forms that the policy require and that  
11 Latinos are more likely than other groups to be affected by  
12 the policy?

13 MR. DINGMAN: Well, two responses to that, Your  
14 Honor. First of all, the female plaintiffs in this case have  
15 no documents at all. So there is no document they could  
16 present to satisfy the policy.

17 Secondly, and we proffered these to the Court, the  
18 residential occupancy manual standards have a laundry list of  
19 documents that prove legal status and legal residence.

20 We provided a declaration from Mr. Jones who  
21 testified that those applied to Waples Park. And so it wasn't  
22 simply limited to I-94s or Visas. It was if you had proof  
23 from a U.S. Government-issued document that you have legal  
24 status, that was sufficient. And all of the defendants who  
25 were deposed on that, Mr. Jones, Ms. Easton, Ms. Giambanco,

1 all testified to that fact.

2 So there is no evidence that the defendants limited  
3 what would be accepted to prove legal status. Nor is there  
4 any evidence that there was any effort by the female  
5 plaintiffs to provide any such documents, because they do not  
6 exist.

7 THE COURT: All right. Let's turn to -- do you have  
8 anything, Mr. Ramkumar, you want to say on the 1981 claim that  
9 hasn't been already said?

10 MR. RAMKUMAR: I do, Your Honor, just very briefly.  
11 There are two principal reasons why plaintiffs have sustained  
12 their burden on the Section 1981 claim sufficient for this  
13 claim to go forward to a jury.

14 One is, as Your Honor just noted, an I-94 and a Visa  
15 are not particularly probative of legal status, yet they  
16 impose substantial burdens. And the second --

17 THE COURT: What's the I-94 again?

18 MR. RAMKUMAR: That's the arrival/departure form,  
19 Your Honor.

20 THE COURT: Well, it has something to do with legal  
21 presence. If you didn't have an I-94 at all, then you could  
22 have walked across the border in Texas because you wouldn't  
23 have an I-94, right? At least if you had an I-94, you would  
24 have passed some inspection at some border.

25 MR. RAMKUMAR: Yes, Your Honor. But plaintiffs have

1 put forth a record evidence with a Yakub declaration showing  
2 that there are some individuals who, for example, obtain  
3 temporary protected status who don't necessarily have an I-94.

4 THE COURT: That's true. But to say that the I-94  
5 have no relevance and no value at all seems to me to overstate  
6 the case. It has some, it isn't conclusive. In fact, very  
7 little is conclusive, other than a green card or a work permit  
8 or something. Even a social security card isn't proof of  
9 legal presence, because you can buy those in Washington. But,  
10 I'm not sure that there is a single document that everyone  
11 would have.

12 In any event, go ahead, I'll hear from you further.

13 MR. RAMKUMAR: And then the second reason, Your  
14 Honor, and the plaintiffs have pointed this out repeatedly, is  
15 the policy's breadth.

16 THE COURT: Is the what, sir?

17 MR. RAMKUMAR: Is the policy's breadth. And its  
18 application --

19 THE COURT: The policy's?

20 MR. DINGMAN: Breadth.

21 THE COURT: Breadth. I'm sorry. Yes, go ahead.

22 MR. RAMKUMAR: And it's an application not just to  
23 the female plaintiffs, but also to the male plaintiffs.

24 Now, moments ago when opposing counsel was  
25 addressing the Fair Housing Act claims, he made the argument

1 that the policy does not affect the ability of any legally  
2 present individual to lease at the park.

3 Plaintiffs vigorously dispute that fact, insofar as  
4 the male plaintiffs attempted to renew their leases repeatedly  
5 yet were rebuffed because of this policy.

6 There's no --

7 THE COURT: Well, that's because of their wives or  
8 their female companions, right?

9 MR. RAMKUMAR: Well, Your Honor, plaintiffs would  
10 submit that that's not entirely clear from the record insofar  
11 as the violation letters --

12 THE COURT: What are you going to tell the jury  
13 about all these other Latinos in the park that have not had  
14 any trouble? It's kind of hard to have an animus against  
15 Latinos when they're 60 percent of your park.

16 MR. RAMKUMAR: Your Honor, as the Supreme Court  
17 cases in plaintiff's briefs note, it is not necessary to show  
18 that treatment of other members of a --

19 THE COURT: No, it isn't necessary, but you've got  
20 to persuade a jury.

21 Do you really think you can do that with 60 percent  
22 of the park being Latinos?

23 MR. RAMKUMAR: We do, Your Honor.

24 THE COURT: All right. Good luck. If I get to that  
25 point. Good luck.

1 Go ahead. Let me hear further from you.

2 MR. RAMKUMAR: Similarly, Your Honor, the fact that  
3 there's no record justification or rationale for why the male  
4 plaintiffs were required to pay the increased rent and were  
5 required to face an increased eviction.

6 So plaintiffs believe that these two pieces of  
7 evidence satisfy our burden under the Section 1981 claim.

8 THE COURT: All right. And let me ask Mr. Dingman.  
9 I don't see any rationale for the increased rent. Why should  
10 these people have to pay increased rent?

11 MR. DINGMAN: Well, the issue, Your Honor, is when  
12 you go to a month-to-month lease, you now have a higher-risk  
13 tenant because they're not obligated and you have no agreement  
14 that they have to stay for a full year. So what the  
15 defendants did here -- and it's exactly what you were saying  
16 earlier, Your Honor. We didn't immediately throw them out.  
17 Had we done that, that would have been used against us.

18 What the evidence shows, and it's undisputed, is  
19 that you --

20 THE COURT: You get sued because you were  
21 good-hearted. Right?

22 MR. DINGMAN: These women were all given the  
23 opportunity --

24 THE COURT: That's what the jury is going to hear.

25 MR. DINGMAN: Well, the jury is going to hear that

1 there's no evidence that Latinos are targeted or have ever  
2 been targeted. That's the fundamental issue they have to  
3 prove for both of these intentional discrimination claims.  
4 They haven't given this Court any evidence of that.

5 THE COURT: Tell me again what the record shows  
6 about the ethnicity of your client, the workers?

7 Yours, Mr. Dingman.

8 MR. DINGMAN: Carolina Easton is a Latina immigrant  
9 from Peru.

10 THE COURT: Who is she now?

11 MR. DINGMAN: She is -- Josephine Giambanco is the  
12 property manager. Carolina Easton is her immediate  
13 supervisor. And they were both deposed in this case. She  
14 came from Peru. She's a legal immigrant in this country.  
15 She's Latino. And I can tell you --

16 THE COURT: Is she a Spanish speaker?

17 MR. DINGMAN: She is a Spanish speaker.

18 THE COURT: And who is the other person?

19 MR. DINGMAN: Josephine Giambanco, who's Italian and  
20 who also came to this county and is a legal resident now.

21 And one of the things, Your Honor, always in my mind  
22 gets overlooked in this case, Caroline Easton is being told,  
23 you discriminate against Latinos, and she herself is Latino.

24 THE COURT: Save it for the jury. I'm not moved.

25 MR. DINGMAN: It shouldn't get to the jury.

1                   THE COURT: Tell me this, who is the head of Waples  
2 Mobile Home Park Limited Partnership?

3                   MR. DINGMAN: It's a -- well, there's -- I would  
4 probably have to say Mark Jones is the CFO.

5                   THE COURT: Was he deposed?

6                   MR. DINGMAN: Yes, he was. He was the corporate  
7 representative.

8                   THE COURT: All right. And who made the decision to  
9 implement this policy?

10                  MR. DINGMAN: This policy, as the evidence showed,  
11 was implemented in 2006. So it wasn't a policy that was  
12 suddenly implemented, as the plaintiff suggests. The  
13 requirement for proof of legal residence has been in place for  
14 more than ten years. And as Mr. Caruso stated in his  
15 declaration and report, there are a myriad of reasons for  
16 that. So this is not a sudden policy that was implemented.  
17 It's a policy that's been in place for a long time.

18                  THE COURT: Who made the decision to implement the  
19 policy?

20                  MR. DINGMAN: At that time it was the managers of  
21 the park, and none of them are still with the company.

22                  THE COURT: All right. And when the policy changed  
23 in 2015, who made that decision?

24                  MR. DINGMAN: Well, the policy didn't change. What  
25 was discovered through audits, and we audited everybody, is

1 that we did not have the documentation that was required under  
2 the policy. And so we asked people, not just Latinos, to  
3 provide the documentation that was missing.

4 THE COURT: All right. Well, the arguments that  
5 I've heard -- Mr. Ramkumar, I'll give you the last word here  
6 -- but the arguments I've heard have been helpful.

7 Let me hear anything further you have, Mr. Ramkumar.

8 MR. RAMKUMAR: Just very briefly. Opposing counsel  
9 addressed the increased rent and the conversion of the female  
10 and the male plaintiff's leases into month-to-month leases.  
11 And he said the reason for that was the increased risk they  
12 posed. But once again, this goes to the pretextual nature of  
13 the justifications offered. There is no record evidence that  
14 the male plaintiffs and the female plaintiffs posed any sort  
15 of risk while they lived at the park. And simply because the  
16 defendants decided to abruptly begin the recertification  
17 process does not make that risk appear.

18 For these reasons and the reason already elucidated  
19 in our papers, we believe a 1981 claim can go to a jury.

20 THE COURT: All right. Mr. Dingman, you realize  
21 that if this matter does go to trial -- I'm going to take the  
22 matter under advisement -- but if the matter does go to trial,  
23 the jury will not be instructed along the lines of the  
24 *McDonnell Douglas, Burdine* proof scheme.

25 Instead, the jury will be asked the simple question:

1 Do you find -- for example, on the FHA claims -- do you find  
2 that the plaintiff has proved by a preponderance of the  
3 evidence that the implementation of this policy was caused by  
4 an anti-Latino animus; that the ethnic origin of the  
5 plaintiffs was the cause of the imposition of the -- or the  
6 imposition of the policy on them? And that -- that's what the  
7 jury will have. To them, it's that simple.

8 But you're aware that it's not going to go through  
9 this *McDonnell Douglas, Burdine* scheme?

10 MR. DINGMAN: Yes, I'm aware, Your Honor. And  
11 that's the -- at the end of the day, what the *Hicks* case says  
12 is there has to be evidence where a jury can say, you did this  
13 to intentionally discriminate against Latinos. I would ask  
14 the Court, what evidence have you heard that demonstrates  
15 that? What you have heard is that the majority of the  
16 residents are Latino. And in request for admissions, all of  
17 the plaintiffs say Latinos routinely are able to sign leases.  
18 So where is their Latino animus?

19 THE COURT: All right. And Mr. Ramkumar, to be true  
20 to my offer to have you have the last word, the anti-Latino  
21 animus is where, in a sentence?

22 MR. RAMKUMAR: It is found in the fact that the male  
23 plaintiffs, who are legally present in this country, were  
24 affected equally by the consequences of the policy.

25 THE COURT: All right. Thank you. I'll take the

1 matter under advisement.

2 I'll take a brief recess and then I'll take up the  
3 Nam matter.

4 MR. SANDOVAL: Your Honor, respectfully, there's  
5 another motion before you today in this matter.

6 THE COURT: Yes, I do. This was a motion to do  
7 what? Remind me.

8 MR. SANDOVAL: To strike the report --

9 THE COURT: I can't hear you.

10 MR. SANDOVAL: Excuse me, Your Honor. Plaintiffs  
11 have moved to strike the expert report of defendant's expert.

12 THE COURT: Oh, yes. I'm familiar with that. I'll  
13 rule on that on the papers.

14 MR. SANDOVAL: Thank you, Your Honor.

15 THE COURT: I thank counsel for your cooperation.

16 MS. ODOM: Your Honor, I apologize. The pretrial is  
17 also set for right now.

18 THE COURT: Yes, but I'm not going to set the trial  
19 date and do all of those things until I resolve this matter.  
20 And then I will have you return.

21 MS. ODOM: Thank you.

22 THE COURT: But I appreciate your reminding me of  
23 that. But I don't want to do it until I decide these things.  
24 But you're right, it was also scheduled for today. And I'm  
25 glad you reminded me of this other motion which I will rule

1 on. Thank you.

2 It was nice to see you again, Mr. Ramkumar.

3 MR. RAMKUMAR: Good to see you too, Your Honor.

4 THE COURT: You don't look like you've aged very  
5 much.

6 MR. RAMKUMAR: I take that as a compliment.

7 THE COURT: Court stands in recess. And then I'll  
8 begin with the United States against Nam Hoang.

9

10 **(Proceedings adjourned at 2:59 p.m.)**

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1 CERTIFICATE OF REPORTER

2

3 I, Tonia Harris, an Official Court Reporter for the  
4 Eastern District of Virginia, do hereby certify that I  
5 reported by machine shorthand, in my official capacity, the  
6 proceedings had and testimony adduced upon the Motions Hearing  
7 in the case of the **ROSY GIRON DE REYES, et al versus WAPLES**  
8 **MOBILE HOME PARK LIMITED PARTNERSHIP, et al.** Civil Action  
9 Number 1:16-CV-563, in said court on the 17th day of February,  
10 2017.

11 I further certify that the foregoing 46 pages  
12 constitute the official transcript of said proceedings, as  
13 taken from my machine shorthand notes, my computer realtime  
14 display, together with the backup tape recording of said  
15 proceedings to the best of my ability.

16 In witness whereof, I have hereto subscribed my  
17 name, this the August 23, 2017.

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22 Tonia M. Harris, RPR  
Official Court Reporter